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EXAMINER

MARKOVICH, KRISTINE M

ART UNIT

PAPER NUMBER

3671

DATE MAILED: 06/04/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/553,452

Applicant(s)

KOCH, EARL D.

Examiner

Kristine M. Markovich

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 March 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 25-41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 25-41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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Response to Amendment

Claim Rejections - 35 U.S.C. § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 27, 28, 30, 31, 33, 37 and 38 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 27, line 2, claims a substantially linear elevated "obstruction" while there is a prior mention of the term "obstruction" in claim 25, line 2. Each distinct limitation is required to have an exact nomenclature and subsequent reference to the limitation should be preceded by "said" or "the". The lack of clarity renders the claimed subject matter indefinite. This is the same case in claims 28, 30, and 31 as well. Appropriate correction is required.

Use of the term "relatively heavy material" in claims 33 and 37 is vague in definition and is therefore considered indefinite.

Claim Rejections - 35 U.S.C. § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. Claims 25, 26, 28, 29, 31-33, 36 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shaftner (US Patent 5,308,188) in view of Rech (US Patent 4,373,306).

Shaftner discloses a temporary protective ramp (10, figure 1) for use on a roadway under construction which has a roadway surface and an obstruction elevated above the roadway surface at a height corresponding to an expected elevation of the roadway upon completion of construction. The ramp has a substantially horizontal lower surfaced which contacts the roadway surface during use and an upper surface (11, figure 2) which is inclined downwardly from a first edge at an apex of the ramp to a second edge. The apex has a predetermined height substantially the same as the height of the elevated obstruction above the roadway surface.

Shaftner discloses the claimed invention except for making the ramp from a plurality of segments. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the ramp from a plurality of segments, since it has been held that making an old device portable or movable without producing any new and unexpected result involves only routine skill in the art. *In re Lindberg*, 93 USPQ 23 (CCPA 1952). Regarding the complimentary coupling formations, Rech discloses that it is known in the art to provide the device in segments having complimentary coupling formations (figure 1; column 2, lines 17-27) in order to make the device portable for temporary use in the desired form needed at the time of construction. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the ramp of Shaftner with the sections of Rech with the teaching of *In re Lindberg*, in order to make the device portable for temporary use in the desired form needed at the time of construction.

With respect to claims 26 and 29, a ratio of 1:20 (i.e., a 5% grade) is common in roadways and related structures in order to accommodate a desired or necessary elevation

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change while providing an angle easily negotiated by design vehicles. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use this specific grade if perhaps the obstruction was on a road with a high speed limit and a small impact to a passing vehicle was desired.

With respect to claim 28, the obstruction is a substantially circular obstruction and the ramp itself can either be annular or rectangular in shape (see figures 1 and 4).

Regarding the additional ramp segments of claim 29, using the logic detailed above in the rejection of claim 25, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the ramp from a plurality of segments, since it has been held that making an old device portable or movable without producing any new and unexpected result involves only routine skill in the art. *In re Lindberg*, 93 USPQ 23 (CCPA 1952).

With respect to claims 32, 33, 36 and 37 the ramp is made of an elastomeric material (column 2, lines 2-3 and column 3, lines 54-63).

5. Claims 27 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shaftner in view of Rech as applied to claim 26 and 29 above, and further in view of Browne (US Patent 1,055,442)

The combination of paragraph 4 above discloses the claimed device except for a linear elevated obstruction on the roadway surface. Brown discloses that it is known in the art to provide a linear obstruction on the roadway surface and therefore have ramp segments that are rectangular (figure 1) in order to provide a flush fit to the obstruction to eliminate harsh driving conditions. It would have been obvious to one having ordinary skill in the art at the time the

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invention was made to provide the combination of paragraph 4 above with the shape of Browne, in order to provide a flush fit to the obstruction to eliminate harsh driving conditions.

6. Claims 34 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shaftner in view of Rech as applied to claim 33 and 37 above, and further in view of Wright (US Patent 3,596,628)

The combination of paragraph 4 above discloses the claimed device except for the metal core. Wright discloses that it is known in the art to provide a metal core in order to keep the road device weighted to the ground (abstract). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the combination of paragraph 4 above with the metal core of Wright, in order to keep the road device weighted to the ground during use.

7. Claims 35 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shaftner in view of Rech as applied to claim 25 and 29 above, and further in view of Browne (US Patent 1,055,442)

The combination of paragraph 4 above discloses the claimed device except for fastener opening with fasteners. Brown discloses that it is known in the art to provide a fastener opening and fastener (8, 9, figure 2) in order to keep the ramp device in place during use. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the combination of paragraph 4 above with the fasteners openings and fastener of Browne, in order to keep the ramp device in place during use.

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8. Claims 40 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shaftner in view of Rech as applied to claims 25 and 29 above, and further in view of Poe (US Patent 3,936,898).

The combination of paragraph 4 above discloses the claimed device except for a hinge mechanism. Poe discloses that it is known in the art to provide a hinge mechanism (15, figure 2) to allow a ramp to be portable. It has been held that making an old device portable or movable without producing any new and unexpected result involves only routine skill in the art. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the combination of paragraph 4 above with the hinge mechanism of Poe, in order to make the ramp a portable device.

Response to Arguments

9. Applicant's arguments filed 3/19/02 have been fully considered but they are not persuasive.

Regarding applicant's claim of hindsight reasoning with examiner's use of Shaftner in view of Rech, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). In this case, making a formerly integral element into separate pieces is considered commonplace and is well within the skill of one in the art to have made based on viewing the device of Shaftner. Further, attaching these now separate elements such that they form a unitary element by use of interfitting is commonplace. For example, tongue and groove joints have been used for assembly for centuries, if not longer.

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In response to applicant's argument that Rech is not drawn to use on a roadway, examiner disagrees with applicant's reasoning. Rech is not used to teach the use of a ramp on a roadway. The base reference (i.e. Shaftner) is used to teach that limitation. Rech is simply used to show that ANY ramp can be sectioned together by interfitting elements, for ease of construction. Making a formally integral element into multiple pieces is not novel. Again examiner points toward the following teaching: It has been held that making an old device portable or movable without producing any new and unexpected result involves only routine skill in the art. *In re Lindberg*, 93 USPQ 23 (CCPA 1952). Additional case law teaches that it has been held that constructing a formerly integral structure into various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kristine M. Markovich whose telephone number is (703) 305-1676. The examiner can normally be reached on Mon-Fri from 8:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached on (703) 308-3870. The fax phone number for this Group is (703)305-3597.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-1113.



Thomas B. Will
Supervisory Patent Examiner
Group 3600



KMM
May 27, 2002